

April 16 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

STANLEY DEAN DETHMAN,

Petitioner,

vs.

No. DA 10-0179

STATE OF MONTANA, THIRD  
JUDICIAL DISTRICT COURT  
AND THE HONORABLE RAY J.  
DAYTON, Presiding Judge,

Respondents.

FILED

APR 16 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

AFFIDAVIT OF STANLEY DEAN DETHMAN

STATE OF MONTANA                     )  
  :SS  
COUNTY OF SILVER BOW             )

Stanley Dean Dethman, being first duly sworn, under oath deposes  
and says:

1. That I make this Affidavit in support of my Petition to Grant an Out-of-Time Appeal.
2. I have no training in the law. My misunderstanding of court procedures and my inability to properly place issues before the court with any effectiveness throughout these proceedings, despite my best efforts establishes this fact.

AFFIDAVIT OF STANLEY DEAN DETHMAN

3. I was diagnosed as having schizophrenia in 1974, was discharged from the United States Marine Corp and I receive Social Security benefits.

4. On September 16, 2008 I was charged in Powell County District Court by Information with Driving Under the Influence of Alcohol, a misdemeanor, Assault on a Peace Officer, a felony and resisting arrest, a misdemeanor.

5. I was formerly designated as indigent by Judge Dayton. I was appointed Ben Krakowka, a public defender, to represent me.

6. I made requests of Mr. Krakowka to get information on the effect of a Taser on my tens unit. He refused without giving me any explanation. He also refused to move to suppress statements I made after I was struck by a police officer. I asked for defense based upon a lack of intent as I was schizophrenic and had hit my head. Ben refused to do this. I also asked for a more thorough investigation and this was disapproved of by him.

7. I told Ben that I did not believe he was giving me an adequate defense. I wrote to the Public Defender's Office requesting that another attorney be assigned to my case. This was refused.

8. I wrote a letter to Judge Ray J. Dayton requesting that another attorney be appointed. I stated the same objections that I had given to the Public Defender's Office.

9. Based on my letter, Judge Dayton scheduled a hearing approximately one week prior to the date set for final pretrial. Judge Dayton asked whether I wanted Mr. Krakowka dismissed. I stated "Yes". Judge Dayton asked why. I stated that Ben wasn't defending me properly. Judge Dayton asked me to list the things I believed Mr. Krakowka was not doing. I responded by listing the several things I had asked of Mr. Krakowka which he refused to provide. At some point Judge Dayton asked me again whether I wanted to discharge Mr. Krakowka. I responded that I did. Judge Dayton asked me if I understood that it was foolish of me to defend myself. I stated that I knew that. He asked if I wanted to proceed without an attorney and I stated "No". Judge Dayton dismissed Mr. Krakowka and ordered that the public defender's office not appoint new counsel. Eventually, Judge Dayton appointed Mr. Krakowka as "stand by counsel".

10. I pled no contest to the DUI prior to trial, believing that evidence of the DUI and subsequent interview would not be admissible. However, Mr. Smith mentioned this in his closing statement.

11. I proceeded to trial representing myself on the remaining two charges. The trial lasted two days. The first witness named "Luke" was interviewed by Mr. Krakowka. Mr. Krakowka objected twice during trial,

but was instructed by the Court in chambers not to object unless I asked him to do so.

12. I believe that being required to represent myself at trial deprived me of my right to effective assistance of counsel. Improper evidence was permitted to be introduced due to a lack of an objection, other objections made by me could have been more effectively made by an attorney. I lack the skills necessary to properly examine and cross-examine witnesses. I believe that I have meritorious issues to be presented on appeal.

13. I was convicted by the jury of Felony Assault upon a Peace Officer and Misdemeanor Resisting Arrest. I was sentenced to sixty days in the Powell County Jail for the DUI charge, with all but 10 days suspended, a fine of \$600.00, a \$15.00 court surcharge, and a \$50.00 victim/witness advocate fee pursuant to Mont. Code Ann. §46-18-236. For the offense of Assault upon a Peace Office, I was sentenced to the Montana Department of Corrections for a term of ten years, with five years suspended. I was ordered to pay a \$20.00 court surcharge, a \$50.00 victim/witness advocate fee, and a \$10.00 court technology fee, pursuant to Mont. Code Ann. §46-18-236 and Mont. Code Ann. §3-1-317. For the offense of Resisting Arrest, I was sentenced to a term of commitment to the Powell County Jail for a period of 60 days, with all except 10 days suspended. I received credit for time served

in the amount of 11 days. I was ordered to pay a fine of \$500.00, a \$15.00 court surcharge, and a \$50.00 victim/witness advocate fee pursuant to Mont. Code Ann. §46-18-236. My sentences for the DUI, assault upon a peace officer and resisting arrest are being run concurrently. I was also fined in the amount of \$669.96 for the damage to the police officer's clothing and equipment. A copy of the Judgment dated April 14, 2009 is attached hereto as Exhibit "A".

14. After sentencing I went to County Jail for a few days and was then transported to the Missoula Assessment and Sanction Center. (MASC Program).

15. In a letter dated 4/15/2009, a copy of which is attached as Exhibit "B" I was informed by Ben Krakowka of my appeal rights. He stated that "If you desire to request an attorney for appeal you will need to reapply for a public defender".

16. As shown by his letter dated April 23, 2009, a copy of which is attached as Exhibit "C", pursuant to Mr. Krakowka's instructions, I had made "another application for a public defender." Mr. Krakowka also stated that any issues in an appeal "will be minimal given that you represented yourself."

17. By this time I was getting upset because Mr. Krakowka was again downplaying the issues involved in my appeal and really didn't seem interested in putting the important issues before this Court. I wrote to Ms. Randi Hood, Chief Public Defender expressing these concerns. As shown by Ms. Hood's correspondence with me dated April 30, 2009, a copy of which is attached hereto as Exhibit "D", Ms. Hood, in turn, referred my complaint to Sherry Staedler, the regional deputy public defender.

18. By letter dated April 27, 2009, a copy of which is attached hereto as Exhibit "E", I was informed by Mr. Krakawka that, contrary to what I had been told by him previously, I needed to file notice of my appeal on my own and then needed to file a motion to the Montana Supreme Court for a appellate defender.

19. On May 22, 2009 Sherry Petrovich Straedler corresponded with me returning the documents she had concerning my appeal. A copy of this letter is attached as Exhibit "F". Although Ms. Staedler gave me addresses for the District and Supreme Court Clerks and for the Attorney General and County Attorney, I was not provided with any separate address for the appellate public defender's office.

20. Ms. Staedler again wrote to me on June 1, 2009 returning a Notice of Appeal I had sent and advising me that I was required file the

Notice of Appeal myself and that I must "ask for counsel through the appropriate office once you have filed your notice of appeal through the appropriate court." A copy of this letter is attached hereto as Exhibit "G"

21. I had received the letter of June 1, 2009 after receiving the letter from Ms. Staedler dated June 3, 2009, a copy of which is attached hereto as Exhibit "H". Prior to this I had been mailed some mail at the prison, some at the Missoula County Detention Center, some addressed to me at Montana State Prison and some at MASC. (Compare the correspondence dated 4/27/2009 addressed to me at MASC with the Correspondence dated April 30, 2009, at the Missoula County Detention Center, the correspondence of May 22, 2009 addressed to me at Montana State Prison and the June 3, 2009 correspondence addressed to me at the Missoula County Detention Center, a copy of which is attached hereto as Exhibit "I"). This indicates to me that during this approximate period I was transferred from the MASC Program in Missoula to the Martz Diagnostic Center at MSP in Deer Lodge. There was some delay in my mail catching up to me. This was close to the date that my time for an appeal was to lapse.

22. I have obtained my Commissary Delivery Ticket for June 4, 2009 which shows that I was at the prison by June 4, 2009. A copy of this Delivery Ticket is attached hereto as Exhibit "J".

23. While being housed at the Martz Diagnostic Center there is virtually no opportunity to obtain any assistance from anyone regarding legal matters.

24. I attempted to make a timely filing by mail on June 7, 2009, just prior to the lapse of the time for regular appeal which I calculated to be mid-June, 2009. On June 15, 2009 letters were addressed to me from Polly Green, Deputy Clerk of District Court for Powell County and B. Stipich, Appellate Case Manager for this Court informing me that my submissions were being returned because of errors made in the filing requirements. Copies of these letters are attached as Exhibits "K" and "L" respectively.

25. Although the period for a timely appeal had lapsed I continued to attempt to have this Court review this matter. I corresponded with B. Stipich on September 4, 2009. I had not yet learned of the availability of an "out-of-time" appeal. A copy of this letter is attached as Exhibit "M".

26. By September 14, 2009 I had obtained the address of the Appellate Public Defender's Office. I wrote to Mr. Wheelis of that office on that date. A copy of this correspondence is attached as Exhibit "N".

27. On September 17, 2009 B. Stipich wrote to me informing me that my most recent attempt to file a Notice of Appeal was untimely and

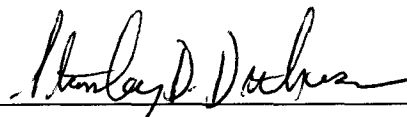


informing me of the Out-of-time appeal procedure. A copy of this letter is attached as Exhibit "O".

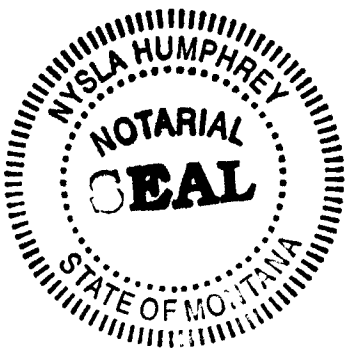
28. I even attempted to obtain assistance from the Attorney General's office who urged me to obtain "private legal counsel" (Exhibit "I") and to the governor who advised me to get "redress through the courts." A copy of the letter from the Governor's office is attached as Exhibit "P".

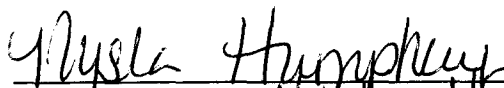
29. In conclusion I ask the Court consider all my efforts to obtain counsel and assistance in filing a timely appeal. Although I repeatedly sought help, it was never provided. Although I attempted to file a timely appeal on my own, I was not able to do so because of my lack of legal training.

DATED this 12<sup>th</sup> day of April, 2010.

  
Stanley Dean Dethman

SUBSCRIBED to and SWORN before me this 12<sup>th</sup> day of April, 2010.



  
Name (Printed) Nysla Humphrey  
Notary Public for the State of Montana  
Residing at Butte, mt  
My Commission Expires Oct. 18, 2010

AFFIDAVIT OF STANLEY DEAN DETHMAN